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DATE: January 17, 1995

CASE NO.: 94-ERA-13

IN THE MATTER OF

DANNY M. CARTER,
Complainant,

v.

B&W NUCLEAR TECHNOLOGIES, INC.,

and

TENNESSEE VALLEY AUTHORITY,
Respondents.

Appearances: ROBERT C. MANN, Esq.
For the Complainant

DONN C. MEINDERTSMA, Esq.
For B&W Nuclear Technologies, Inc.

THOMAS F. FINE, Esq.
For Tennessee Valley Authority

Before: DANIEL A. SARNO, JR.
Administrative Law Judge

**RECOMMENDED ORDER APPROVING
SETTLEMENT AND DISMISSING CASE**

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This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 as amended, 42 U.S.C. Section 5851. The case was scheduled to be heard in Huntsville, Alabama commencing on October 25, 1994.

Prior to the scheduled hearing, counsel advised the Presiding Judge that the parties had reached agreement to dispose of the matter by settlement. Under cover letter dated January 6, 1995, the parties submitted a "Joint Motion to Dismiss Complaint With Prejudice and Approve Settlement" and the "Confidential Settlement Agreement and Release."

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. *Fuchkco and Yunker v. Georgia Power Co.*, 89-ERA-9 and 10 (Sec'y, March 23, 1984). The settlement must adequately protect the whistleblower. *Virginia Electric and Power Co.*, 19 FERCS 61, 333 (Federal/Energy/Regulatory Commission, 1982). Furthermore, the settlement must not be contrary to public interest. *Heffley v. NCK Metals Corp.*, 89 SDW 2 (Sec'y, March 6, 1990).

First, I note that the parties are represented by counsel. In reaching an agreement, Respondents do not admit that they have broken any law or regulation. Nor is the agreement to be construed as a admission of liability or wrong doing by Respondents. Moreover, Complainant waives his right to sue in the future on claims or causes of action arising out of facts occurring prior to the date of the execution of the agreement. Also, Complainant agrees that he is not entitled to reinstatement under the agreement.

The agreement designates specific information as confidential commercial information to be handled as provided at 29 C.F.R. § 70.26(b) (1991). Thus, Respondents request that the Secretary of Labor retain the Settlement Agreement in confidence to the full extent permitted by law. *Debose v. Carolina Power + Light Co.*, Case No. 92-ERA-14 (Sec'y Feb. 7, 1994).[1]

After consideration of the settlement agreement, I find that

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none of the terms or conditions are unacceptable. Moreover, I find the agreement to be fair, adequate and reasonable, and I believe it is in the public interest to adopt the agreement as a basis for the

administrative disposition of this case. Therefore, I recommend dismissal of this proceeding with prejudice based upon authority conferred by 29 C.F.R. Section 19.39(b).

DANIEL A. SARNO, JR.
Administrative Law Judge

DAS/ccb

NOTICE: *This Recommended Decision and Order and the administrative file in this matter will be forwarded for review by the Secretary of Labor to the Office of Administrative Appeals, U. S. Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. The Office of Administrative Appeals has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. See 55 Fed. Reg. 13250 (1990).*

[ENDNOTES]

[1] *It is not necessary that the settlement agreement be part of the final order. Macktal v. Brown + Root, Inc., Case No. 86-ERA-23, Order to Submit Settlement Agreement issued May 11, 1957, Slip Op. at 2. Decisions to disclose information specifically designated as confidential commercial information are made pursuant to the Department of Labor regulations implementing the Freedom of Information Act. Debose v. Carolina Power, supra; 29 C.F.R. §§ 70.26(b), (c), (e), (f); 5 U.S.C. § 552 (1988).*